

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11659 of 1993
with
SPECIAL CIVIL APPLICATION No 12482 of 1993
and
SPECIAL CIVIL APPLICATION No 9284 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIMA LAKHMAN BHUVA

Versus

PRESIDENT NAGARPALIKA MANGROL

Appearance:

In Special Civil Application No 11659 of 1993
MR IM PANDYA for Petitioners
None present for Respondents No. 1, 2

In Sp. Civil Applications No 12482/93 and 9284/94
MR PV HATHI for Petitioners
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. All these three special civil applications have arisen on same facts and they proceed on same grounds of challenge, and as such, they are being taken up for hearing together and are being disposed of by this common order.

2. The petitioners were appointed in the office of the respondents on different dates as given out in the special civil applications. They have been appointed on different posts. However, they were appointed on consolidated salary. These special civil applications have been filed by the petitioners for grant of following reliefs:

(a) The action of the respondents to give the petitioners consolidated salary be declared to be illegal and bad;

(b) The respondents be directed to give to the petitioners the minimum scale of their respective posts on which they are working, and

(c) To direct the respondents to regularise their services.

3. In the special civil applications, reference has been made to the fact that the employees of the respondents raised an industrial dispute in the matter of revision of the salary and for other benefits. In the said industrial dispute before the Labour Court, a settlement has been entered into and in terms of the settlement, the award has been passed on 10th January, 1990. In the said settlement, the respondents have agreed to give the salary to its employees as per the recommendations adopted by the State Government. In other two petitions i.e. the Sp. C.A. Nos.12482/93 and 9284/94, the prayer has also been made to give the petitioners the benefit of the award of the Labour Court dated 10th January, 1992.

4. In these special civil applications, except the special civil application No.9284/94, interim relief has been granted in terms that the services of the petitioners may not be terminated pending disposal of these special civil applications. So, the petitioners are in service. However, it is not in dispute that the petitioners in special civil application No.9284/94 are also continuing in service.

5. The reply to the special civil applications have been filed by the respondents and plea has been taken

therein that the recruitment rules have been framed in the year 1987 for appointments to be made on different posts in the respondent-office. The appointments of the petitioners have not been made in accordance with the recruitment rules. Their names were not called from the employment exchange nor the applications were invited from open market. The petitioners were not selected, but they have entered in the service from back door. So no relief of the nature as prayed for can be granted to the petitioners. The appointment of the petitioners are contrary to the recruitment rules, and as such, no right whatsoever have accrued to them to pray for the minimum scale in the regular pay scale as well as for the regularisation of their services. It has further been stated in the reply that the reference to the award of the Labour Court in these matters is absolutely unwarranted and irrelevant. The award has nothing to do with the claim which has been made by the petitioners in these special civil applications. The award only pertains to giving of the benefit of the revision of pay scale as adopted by the respondent to its employees. Before the Labour Court, the case of the petitioners regarding their claim made in these special civil applications was not there.

6. The respondents have filed further affidavit in these special civil applications to explain regarding the resolutions of the respondents dated 31st October, 1993 and 6th November, 1993. Under these resolutions, the petitioners had apprehended that their services have been brought to an end. The respondents have stated in the affidavit that the resolution dated 31st October, 1993 has been cancelled by the Collector, Junagadh vide its order dated 19-6-1994 exercising its power under sec.258 of the Gujarat Municipalities Act. The resolution dated 6th November, 1993 had been placed under suspension by the Collector, Junagadh District, by his order dated 9-12-1993. Thereafter, the final order has been passed on 29th September, 1994 for the resolution dated 6th November, 1993 to be dealt with by the administrator of the respondent in accordance with the instructions passed by the State Government from time to time and also in consonance with the provisions of the Gujarat Municipalities Act and also considering the public interest as well as the interest of the Municipality.

7. The learned counsel for the petitioners contended that the petitioners are serving in the office of the respondent though on a consolidated salary but for years together, and as such, they have acquired a right of getting the pay in the regular pay scale as well as for

the regularisation of their services. It has next been contended that number of posts are available in the office of the respondent, and as such, looking to the long service of the petitioners their services should have been ordered to be regularised.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners.

9. The averments made in reply to the special civil applications have not been controverted by the petitioners. So it is a case where the petitioners were given the appointment dehors the recruitment rules. The appointments were given only on adhoc or urgent temporary basis and on consolidated salary. So, the respondents are correct to contend that it is a case of back-door entry. However, the fact remains that many of the petitioners are in service of the respondents for more than 12 to 13 years except few petitioners who have few years of service to their credit. In special civil application No.9284/94, the petitioner is in service of the respondent since 22-5-1984. In special civil application No.12482/93, the petitioners are in service from 1983-84. In special civil application No.11659/93, three petitioners are in service from 1983, 1984 and 1985 and rest of the petitioners are in service from 1991 or 1992.

10. So when one class of petitioners are continuing in service of the respondent for more than 12 years and taking into consideration the fact that the Government has taken a decision vide its resolution dated 17th October, 1988 to confer the benefits of pay scale and other benefits to the even daily wagers, the cases of these petitioners who have worked for such a long period deserves same treatment. It is true that the Government resolution is not binding on the respondent and it is also not the case of the petitioners that the aforesaid resolution was adopted by the respondents, but it gives a guideline that even the Government has decided to confer the benefits of the pay scale and other benefits to the daily wagers who have been appointed earlier to 1st October, 1988. This Court has also protected the petitioners except in one case. Though it is a case of back-door entry but nevertheless, the petitioners themselves have not entered by breaking the back door. Somebody was there in the office of the respondent who has let them in through back door. It is really shocking that the person who has let these persons in through back door has not been taken to task and there may be

possibility that he would have been rewarded the promotions etc. and these persons now are being said to not entitle for any benefits by the respondents on the ground that their appointments are dehors of the recruitment rules. The respondents should have been equally fair to the petitioners also. If the respondents take it to be a case of back-door entry then at the same time, it should have taken the action against the officers who are responsible for these appointments, but it is only a unilateral approach made in the matter and those persons who are culprit of the back door appointments have been set free.

11. Yet there is another aspect of the matter which time and again puts the Court in trouble. By working for years together, some equity has come in favour of these persons irrespective of the fact whether they were appointed dehors of the rules or their appointments were a back-door entry. By passing of the time, they settle in life and the employees also got married and there may be increase in the number of their family members. By passing of the time of 12 to 13 years most of the employees become over-aged. So they will not get the employment elsewhere also. One more aspect is there that after working for 12 years it is too difficult for the employees to compete with the new generation. How injuriously the respondents acted. If we go by the defence taken by the respondents in reply to these special civil applications and if the posts are available then what for these appointments on consolidated salary or on daily wages or adhoc or temporary appointments. The respondents should have made an endeavour to see that the appointments are made only in accordance with the recruitment rules. No adhoc or temporary appointment or appointment on consolidated salary or on daily wage should be made. For any unavoidable reason, like where the vacancy arises because of the incumbent or the holder of the post has gone on long leave or has expired or retired and urgently, the man power is required, and filling up of the post by the process of selection as per rules may take time, then for a short time i.e. for two to three months, such temporary appointment can be given, but giving of such appointment and then continuing these persons for years together, is a fact which gives out that the respondents have acted arbitrarily. These persons should have been made known that their services are only for three months and in between the selections are to be made, but that course has not been adopted and the respondents permitted the petitioners to have aspiration that at one point of time they will get the pay in the regular pay scale and other benefits as well

as their services will be regularised. It is true that normally the appointments which are dehors of rules, no protection should be given, but this broad aspect of the matter cannot be altogether ignored and overruled more so, when the Government in its many of the departments has decided to confer the benefits of regular pay scale and other benefits even on the daily wagers.

12. Taking into consideration the totality of the facts of the case, the interest of justice will be met in case these special civil applications are disposed of with the direction that the respondents may take immediate steps to fill up the vacant posts available in its office as per the recruitment rules and all these petitioners shall be given an opportunity to compete in the selection. The candidature of the petitioners may not be rejected only on the ground of age eligibility. This exercise should be undertaken within a period of six months from the date of receipt of certified copy of this order. Till then the petitioners may be allowed to continue in service. In case, ultimately, the petitioners or any of the petitioners are not selected then he will not have any right to continue in the employment of the respondent and his appointment shall automatically come to an end on the date on which the selected candidates take over.

13. The respondent No.1 is further restrained from making in future any appointment on daily wages or on consolidated salary or on adhoc or temporary basis, and all the appointments should be made only in accordance with the recruitment rules. If in case the urgent appointment has become necessary for urgent work of the respondent then after giving the reasons for it, the temporary appointment or appointment on daily wages or on consolidated salary may be made for two months and thereafter that appointment should not be continued and the exercise of regular appointment should be undertaken and regular appointment should be made. These special civil applications and Rule therein stands disposed of in the aforesaid terms with no order as to costs.

zgs/-